



# Oregon State University

## REQUEST FOR PROPOSAL (RFP) #2020-001434

### ATHLETIC FACILITY DEVELOPMENT PROGRAM CONSULTANT SERVICES

ISSUE DATE: 10/15/2019

RFP DUE DATE/TIME: 11/5/2019 at 2:00 PM  
Pacific Time

\*Office is closed Noon to 1:00 PM Daily

QUESTION DEADLINE: 10/29/2019 at 5:00 PM  
Pacific Time. All questions should be sent to

[constructioncontracts@oregonstate.edu](mailto:constructioncontracts@oregonstate.edu)

Please include RFP Number/Name in the subject  
line.

PROJECT NUMBER: 1994-20

#### CONTRACT ADMINISTRATOR:

Matt Hausman, Construction Contract Officer  
Construction Contract Administration  
Oregon State University  
644 SW 13<sup>th</sup> Street  
Corvallis, OR 97333  
Phone: (541) 737-3401  
FAX: (541) 737-5546

Email: [constructioncontracts@oregonstate.edu](mailto:constructioncontracts@oregonstate.edu)

#### AWARD DECISION APPEALS:

Hanna Emerson, Construction Contracts Manager  
Construction Contract Administration  
Oregon State University  
644 SW 13<sup>th</sup> Street  
Corvallis, OR 97333  
Phone: (541) 737-7342  
FAX: (541) 737-5546

Email: [hanna.emerson@oregonstate.edu](mailto:hanna.emerson@oregonstate.edu)

It is the Proposers responsibility to continue to monitor the [OSU Business and Bid Opportunities](#) website for Addenda. Failure to acknowledge any Addenda in the Transmittal Letter may cause your proposal to be considered non-responsive.

*OSU standards and policies govern this solicitation ([Procurement Thresholds and Methods, Procurement Solicitations and Contracts](#)) unless otherwise referenced or stated.*

## **1.0 INTRODUCTION**

Oregon State University (“OSU” and “Owner”) is conducting a competitive **ONE OR TWO-STEP** process to retain **ONE** (1) consultant to provide Athletic Facility Development Program Consultant Services.

Oregon State University is seeking proposals from a facility development program specialist for programming and project development oversight for the renovation, expansion and new construction of the west side of Reser Stadium. The consulting firm is free to sub-contract as necessary to ensure a complete team.

Scope of services will include the following phases: Programming, Schematic Design and Design Development. Additionally, some support, in the form of graphic exhibits and text, may be required for associated public outreach and presentations to various administrative groups.

OSU will be accepting sealed proposals at Construction Contracts Administration, Oregon State University, 644 SW 13th Street, Corvallis, Oregon, until 2:00 PM Pacific Time, 11/5/2019 for the project.

**\*There will be no Pre-Proposal Conference. Therefore, all questions shall be submitted via e-mail to [ConstructionContracts@oregonstate.edu](mailto:ConstructionContracts@oregonstate.edu) prior to the Question Deadline of 10/29/2019 at 5:00 PM Pacific Time.**

## **2.0 BACKGROUND**

Founded in 1868 as Oregon’s land grant institution, OSU serves the state, the nation and the world as a premier 21st-century research university. OSU is committed to exceptional research, discovery, innovation and engagement — and to integrating its research and engagement mission with the delivery of a high-quality, globally relevant and affordable education for the people of Oregon and beyond. OSU is one of only two land, sea, space and sun grant universities in the U.S. and is the only university in Oregon to have earned both Carnegie Classifications for Very High Research Activity and Community Engagement.

OSU is one of seven public universities in Oregon. Since 2014, OSU has been served by an independent institutional Board of Trustees, appointed by the governor. The Board of Trustees of Oregon State University governs Oregon’s only university with a statewide presence and helps guide OSU’s mission to serve the state and the needs of its citizens in a growing global economy. The university has been continuously accredited since 1924 and is currently accredited by the Northwest Commission on Colleges and Universities. Many of the university’s degree programs are also approved by other specialized accrediting associations.

OSU welcomes an increasingly diverse student body of more than 32,000 students, including over 5,000 graduate students, from across Oregon, all 50 states and more than 100 countries. The university continues to serve its land grant mission, with Oregon residents making up over 71 percent of degree-seeking undergraduates on the Corvallis campus and 57.4 percent overall. Domestically underrepresented students make up more than 25 percent of OSU’s overall enrollment, and international students represent 11 percent of total enrollment.

Students can choose from more than 200 undergraduate and 100 graduate degree programs, including more than 50 degree and certificate programs offered online. OSU has a national and international reputation for its programs in creative writing, public policy, forestry, oceanography, mycology, marine biology, agriculture, robotics and natural resources. Programs are offered through 11 colleges, the Graduate School and the Honors College, one of only a handful of degree-granting honors programs in the

U.S. OSU maintains a rigorous focus on academic excellence, particularly in three signature areas: the science of sustainable Earth ecosystems, health and wellness, and economic prosperity and social progress.

The university's 570-acre main campus is located in the city of Corvallis, a vibrant college town of nearly 58,000 in the heart of Western Oregon's Willamette Valley. Corvallis consistently ranks among the safest, most highly educated and greenest small cities in the nation.

### **3.0 PROJECT DESCRIPTION**

With the east side renovation in 2005, followed ten years later by the Valley Football Center, Reser Stadium offers first-rate amenities in half of the stadium. Oregon State University intends to complete the Reser Stadium experience by replacing an aging structure on the west side with safe and accessible seating, state-of-the-art fan experiences and tenant improvement spaces providing year-round use of the facility.

Key components of the Project include the following:

1. Replace aging and non-accessible west side bowl seating.
2. Structural analysis suggests new construction to be more cost effective to structural retrofit.
3. Improved fan experience for all stadium attendees, including continuous main concourse circulation.
4. Improve and increase concessions and restroom facilities.
5. Repurpose underutilized east side club seating, while creating more loge boxes to meet fan expectations.
6. Addition of new premium spaces and founder's suites.
7. Reduction in seating capacity.
8. New press box.
9. Visitor's locker room.
10. Improved scoreboard.
11. Programmed space for a potential public private partnership with year round usage.

Guiding Principles of the Project include:

1. Complete the stadium, enhance fan experience and bolster the recruiting atmosphere.
2. Integrate a vibrant, engaging year-round program on the west side.
3. Create easy, continuous main concourse circulation.
4. Re-purpose undersold east side club seats and create more loge boxes.
5. Allow for 365 day use in the form of a public private partnership.

Work will commence upon selection of the consultant. Selection of the design team and contractor will follow soon after in order for schematic design to begin following immediately after programming. OSU desires to construct the entire scope of work at one time, with a target opening date to allow for the opening game of the Fall 2023 season to be played in Reser Stadium. An initial program, design and construction schedule is provided below:

Activity/Phase	Start Date	End Date
Programming	Nov 2019	April 2020
Schematic Design	May 2020	Oct 2020
Design Development	Nov 2020	April 2021
Construction Documentation	May 2021	Oct 2021
Permitting/Bid	Nov 2021	Dec 2021
Construction	Dec 2021	July 2023/ Dec 2023*

\*Areas of the stadium not required to directly support football may be completed after the start of the '23 season.

The projected total project cost is approximately \$175M with a direct construction budget of approximately \$122M [established fall 2019.]

#### **4.0 SELECTION AND AWARD SCHEDULE**

The proposals for this RFP will be evaluated/scored by a qualified committee which may include other non-scoring members who serve as advisors but do not score qualifications statements or interviews.

If applicable, interviews of short-listed finalists will occur following the receipt, review and scoring of the responses. In addition, further investigation of references may occur following the committee scoring in a one-step selection process or interviews of the short listed finalists in two-step selection process.

<b>10/15/2019</b>	Issue RFP
<b>10/29/2019</b>	Question and Request for Clarification or Change Deadline
<b>11/1/2019</b>	Issuance of Final Addenda (if necessary)
<b>11/5/2019</b>	Submittal Due Date/Time
<b>Week of November 18, 2019</b>	Estimated Notice of Intent to Award (One-Step) or Notification of Interviewees (Two-Step)
<b>Week of December 2, 2019</b>	Optional Interviews (if necessary)
<b>Week of December 2, 2019</b>	Estimated Notice of Intent to Award (Two-Step)
<b>December 6, 2019</b>	Estimated Contract execution (One-Step)
<b>December 13, 2019</b>	Estimated Contract execution (Two-Step)

OSU will make every effort to adhere to the above schedule. It is however, subject to change.

#### **5.0 INSTRUCTIONS TO OFFERORS**

Your proposal must be contained in a document not to exceed **twenty-five (25) pages (double sided preferred on hard copy)** including pictures, charts, graphs, tables and text you deem appropriate to be part of OSU's review of your proposal. Resumes of key individuals proposed to be involved in this Project are exempted from the twenty-five (25) page limit and must be appended to the end of your proposal. No supplemental information to the twenty-five (25) page limit will be allowed. Appended resumes of the proposed key

individuals, along with a Transmittal letter, table of contents, front and back covers, references and blank section dividers will not be counted in the twenty-five (25) page limit.

**Your proposal must follow the format outlined below and include a Transmittal/Cover Letter signed by an officer of your firm with the authority to commit the firm. Make sure to include contact information including email for communication purposes and acknowledge your receipt of all solicitation addenda.**

The proposal must be submitted in a soft-bound (no three-ring binders) format with page size of 8 ½ x 11 inches. No fold-outs other than one fold out Project schedule and one site logistics plan (not to exceed 11 x 17 inches each) may be included. The basic text information should be presented in standard business font size, and reasonable (no less than one-inch) margins.

OSU may reject any proposal not in compliance with all applicable OSU solicitation procedures and requirements, and may cancel this solicitation or reject for good cause, all proposals upon a finding by OSU that it is in the public interest to do so.

Note that throughout this procurement, OSU will not accept proposals that require OSU to pay the cost of production or delivery.

OSU is an AA/EEO employer.

Telephone, facsimile, or electronically transmitted submittals will not be accepted. Proposals received after the closing date and time will not be considered.

## **6.0 PROPOSAL EVALUATION**

The written response to this RFP is the first step in a potential two-step process in the selection of a Consultant for this Project. The proposals received in response to this RFP will be evaluated by the selection committee with the top scoring firms being invited to participate in on-site interviews should the committee determine they are necessary.

Interviews will include a **THIRTY (30) minute** presentation period, immediately followed by a separate **TWENTY (20) minute** Q&A session.

After all of the interviews are completed, the members of the selection committee will discuss the strengths and weaknesses of the interviewed finalists. The members of the selection committee will then score the interviewed finalists based on all information received, presented and heard during the interviews. Final scoring will be based on finalist's response to questions during the interview stage, and through that response, how well each firm can meet the Project and University needs. The firm that has the highest overall interview score will be deemed the Apparent Successful Proposer and enter into negotiations for a contract.

If applicable, final scoring of the Interviews will be **separate and not cumulative** from the short-listing.

## **7.0 EVALUATION CRITERIA**

The following questions constitute the evaluation criteria for the selection committee to score proposals. Respond to each criterion in numerical order. For ease in scoring, provide tabs keyed to each of the following criteria numbers. Indicate in writing the following information about your firm's ability and desire to perform this work.

### **7.1 Qualifications and Experience of the Firm (30 Points)**

- Provide a brief description of your firm and the focus of the practice. List the projects your firm is currently contracted for and at what stage the projects are in terms of completion. Also include your firm's total dollar volume for each of the last five years.
- Describe your firm's experience with program development for major higher education athletic facilities, the oversight of design and construction of higher education and other athletic/performance venues, meeting program needs, corporate, civil project aspirations of similar size and budget as defined in this RFP.
- Describe your firm's experience with quality assurance and control review as project oversight. Provide specific examples. Include information about the processes you have used for review and analysis to have the facilities move to successful bid and construction.
- Describe your firm's experience understanding, accommodating and prioritizing needs and requirements of students, staff and visitors with disabilities

### **7.2 Qualifications and Experience of the Team (25 Points)**

- Identify key personnel, including project lead and program experts along with those of sub-consultants proposed, to be assigned to this project. Include proposed key personnel's project experience, with specific examples and identify their roles in the projects. Indicate current availability, proposed percentage of project involvement per project phase and indicate whether the proposed team has worked together on previous projects. Highlight the individuals who participated in the project examples.

### **7.3 Project Approach (20 Points)**

- Describe your philosophy and practiced approach to program development that will result in the best experience for Oregon State fans.
- Describe the specific challenges you anticipate for this project based on past project experiences and "lessons learned" from previous projects that you will incorporate to keep the project moving forward.
- OSU must work successfully around football schedules for the 2021, 2022 and 2023 seasons. Describe how you see a path to success for this project to be delivered on time and on budget.
- OSU anticipates (and welcomes) public review and scrutiny as the design moves forward. Describe how you would incorporate a review process into the design without adding to the overall project completion schedule.

### **7.4 Cost (15 Points)**

- Provide a **FEE PROPOSAL** for Program Consultant Services for the period from contract execution through Schematic Design services utilizing the time frames provided in the initial project schedule included in **SECTION 3.0** on a time and materials cost reimbursement basis up to a maximum not-to-exceed amount.

Please include a breakdown of the costs including a listing of the types of personnel participating in the work, an estimate of their hours and rates charged for their services. Scoring will be based solely on the total maximum not-to-exceed amount.

This Fee Proposal will become the initial contract amount for the awardee with additional services being added via amendment if/when applicable.

**NOTE:** Formula for scoring Fee Points will be as follows: Lowest Fee for each of the price related items will receive full points with higher cost price related items receiving proportionally lower points according to this formula: **(Low Fee or Fee%/ Fee or Fee%) x Points Available**

#### **7.5 Workforce Diversity Plan (10 Points)**

- Provide a description and identification of Minority Business Enterprise (MBE), Women Business Enterprise (WBE) or Emerging Small Business (ESB) certifications for your firm and a description of your nondiscrimination practices. Provide historical information on MBE, WBE or ESB Joint Ventures, subcontracting or mentoring plan, and utilization history for projects completed by your firm within the past three (3) years. Provide a narrative description of your current workforce diversity program/plan, and the plan for obtaining subcontracting, consulting, and supplier diversity for this Project. Include a description of the outreach program or plan, including a schedule of events and specific steps that will be taken to maximize broad based and inclusive participation and the plan to provide mentoring, technical or other business development services to subcontractors needing or requesting such services.

The selected firm will provide the services with respect to diversity according to the means and methods described in the workforce plan described in the response, unless changes are requested and approved in writing in advance by OSU or are required by applicable laws, ordinances, codes, regulations, rules or standards.

### **8.0 OPTIONAL INTERVIEWS AND OPTIONAL REFERENCE CHECKS (60 POINTS)**

#### **INTERVIEWS (50 POINTS)**

- Interviews **may** be conducted to aid in determining the Apparent Successful Proposer. Information regarding the Interviews will be provided to the short-listed firms following the initial review and scoring. If applicable, final scoring of the Interviews will be **separate and not cumulative** from the short-listing.

#### **REFERENCE CHECKS (10 POINTS)**

- In addition to responding to the evaluation criteria above, provide the names, addresses and phone numbers of three (3) references. Do not include references from any firms or individuals included in your consulting team for this proposal or any OSU personnel. OSU may check with these references and with other references associated with past work of your firm.

**Please provide the following information:**

Point of Contact:	Person who will be able to answer any customer satisfaction questions.
Phone Number:	Phone number of the contact the University will be interviewing.
User Name:	Name of Company / Institution that retained the Consultant.
Project Name:	Name of the project.
Date Completed:	Date when the work was completed.
Address:	Street, city and state where the work took place.
Size:	Size of project in dollars.
Duration:	Duration of the project / construction in months.
Type:	Type of the project (i.e.: School, Offices, Warehouse, etc.).

OSU may check with these references or other references associated with past work of your firm.

**9.0 FINANCIAL RESPONSIBILITY**

OSU reserves the right to investigate and evaluate, at any time prior to award and execution of the contract, the submitting firms financial responsibility to perform the anticipated contract. Submission of a proposal will constitute approval for OSU to obtain any credit report information OSU deems necessary to conduct the evaluation. OSU will notify the firms, in writing, of any other documentation required, which may include, but need not be limited to: recent profit-and-loss history; current balance statements; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity and credit information. Failure to promptly provide this information may result in rejection of the submission.

OSU may postpone the award or execution of a contract or selection of finalists in order to complete its investigation and evaluation. Failure of a firm to demonstrate financial responsibility may render it non-responsible and constitute grounds for rejection.

**10.0 SUBMISSION**

Submit **ONE (1)** copy of your written proposal, along with an electronic version on a thumb drive, to be received by the Due Date/Time listed in this document to:

Matt Hausman  
Construction Contract Administration  
Oregon State University  
644 SW 13th Street  
Corvallis, OR 97333

Telephone, facsimile, or electronically transmitted submittals **WILL NOT** be accepted.

The electronic copy must be sized appropriately for transfer (under 8 mb).

Proposals received after the closing date and time **WILL NOT** be considered.

**11.0 REQUEST FOR CLARIFICATION OR CHANGE**

All requests for clarification and/or change regarding any information in this RFP must be addressed either in writing or email to Hanna Emerson at the address or email listed in this document no later than 5:00 PM Pacific Time on 10/29/2019. If you are unclear about any information contained in this document or its exhibits (Project, scope, format, agreement terms, etc.), you are urged to submit those requests for formal clarification.



## **12.0 UNIVERSITY SOLICITATION PROCESS OR ACTION APPEALS**

Proposers may submit a written appeal of a University solicitation process or action in accordance with OSU Standard 03-015 ([\*Procurement Thresholds and Methods, Procurement Solicitations and Contracts\*](#)).

## **13.0 CHANGE OR MODIFICATION**

Any change or modification to the specifications or the procurement process will be in the form of an addendum to the RFP and will be made available to all firms by publication on the [\*\*OSU Business and Bid Opportunities\*\*](#) web site. It is the responsibility of each firm to visit the website and download any addenda. No information received in any manner different than as described herein shall serve to change the RFP in any way, regardless of the source of the information.

## **14.0 PROPRIETARY INFORMATION**

OSU will retain this RFP and one copy of each original proposal received, together with copies of all documents pertaining to the award of a contract. These documents will be made a part of a file or record, which shall be open to public inspection after OSU has announced its intent to award a contract. If a proposal contains any information that is considered a trade secret under ORS 192.345(2), you must mark each trade secret with the following legend: **“This data constitutes a trade secret under ORS 192.345(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”**

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance.”

Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determination made pursuant to the Public Records Law.

In order to facilitate public inspection of the non-confidential portion of the proposal, material designated as confidential shall accompany the proposal, but shall be readily separable from it. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

## **15.0 PROJECT TERMINATION**

OSU is seeking to award a contract to a Consultant; however, OSU reserves the right to terminate the Project or contract during any phase in the Project.

## **16.0 CERTIFICATION OF NONDISCRIMINATION**

By submission of a proposal, the proposer certifies under penalty of perjury that the proposer has not discriminated against minority, women, emerging small business or service-disabled veteran owned business enterprises in obtaining any required subcontracts.

## **17.0 ENCLOSURES**

OSU Sample Consultants Agreement

**END OF RFP**

CONSULTANT'S AGREEMENT  
PROJECT NAME  
OREGON STATE UNIVERSITY

This CONSULTANT'S AGREEMENT (the Agreement) is made between:

the Consultant:

and the Owner: Oregon State University  
Construction Contracts Administration  
644 SW 13<sup>th</sup> Ave.  
Corvallis OR 97333

Phone: (541) 737-7342  
FAX: (541) 737-5546

(The Consultant and the Owner are referred to collectively as the "Parties" and individually as a "Party")

WHEREAS THE OWNER DESIRES to have the assistance of the Consultant to provide \_\_\_\_\_ Services for the Project identified as \_\_\_\_\_ for Oregon State University at Corvallis, Oregon (the "Project"); and

WHEREAS, the Consultant, with the aid of certain consultants (the "Consultants"), is willing and able to perform such professional services in connection with the Project;

NOW, THEREFORE, the Owner and the Consultant, for the considerations hereinafter named, agree as follows:

**I. RELATIONSHIP BETWEEN THE PARTIES**

- A. **Effective Date.** This Agreement is effective on the date it has been signed by every party hereto. This is known as the Agreement effective date. No services shall be performed or payment made prior to the Agreement effective date.
- B. **Defined Terms.** In addition to any terms defined elsewhere in the body of this Agreement, certain terms that are capitalized and/or set forth in bold letters throughout the Agreement are defined as follows:

"Additional Services" are those Services described in Section III.C of this Agreement.

"Basic Services" are those Services generally described in sub-section C. of Section I of this Agreement, as well as such additional Basic Services as may be established by amendment.

"Construction Documents" include Owner-approved plans, drawings, specifications and all other documents necessary to allow complete and accurate construction of the Project.

"Contract Documents" include the Construction Contract, any general conditions and supplemental general conditions to the Construction Contract, any amendments to the Construction Contract, the Contractor's performance and payment bonds, the plans, specifications, approved shop drawings, all approved change orders, any solicitation documents, and any response by a successful bidder to any such solicitation documents.

"Design Criteria" means the OSU Construction Standards in effect at the time of the Effective

Date of this Agreement. Current OSU Construction Standards can be found here:  
<http://fa.oregonstate.edu/cpd-standards>

“Direct Construction Costs” are the costs to the Owner of all divisions of construction, including portable equipment designed or specified by the Consultant in the construction specifications.

“Project Completion” means the final completion of all Services described in Section I.C of this Agreement.

“Reimbursable Expenses” are those expenses described in Section III.B of this Agreement.

“Services” are all those services to be performed by the Consultant under the terms of this Agreement.

“Work” is defined as the furnishing of all materials, labor, equipment, transportation, services, and incidentals for the construction of the Project by the contractor (the “Contractor”) that is eventually awarded the contract to construct the Project (the “Construction Contract”).

- C. **Services To Be Performed.** The Consultant agrees to provide, with the assistance of the Consultants, the professional services outlined below for this Project.

Such Services include

The Consultant shall perform the Services according to the following schedule:

---

---

---

The Consultant agrees that time is of the essence in the performance of this Agreement.

D. **Directives for Performance of the Services.**

1. The Consultant shall provide all Services for the Project in accordance with the terms and conditions of this Agreement. The Consultant's performance of Services shall be as a professional Consultant to the Owner to carry out the activities of Project and to provide the technical documents and supervision to achieve the Owner's Project objectives.
2. In administering this Agreement, the Owner may employ the services of an independent project manager, and potentially, other consultants as needed to fulfill the Owner's objectives.
3. The Consultant shall provide a list of all sub-consultants which the Consultant intends to utilize on the Project. The list shall include such information on the qualifications of the sub-consultants as may be requested by the Owner. The Owner reserves the right to review the sub-consultants proposed, and the Consultant shall not retain a sub-consultant to which the Owner has a reasonable objection.
4. The Consultant shall provide to the Owner a list of the proposed key Project personnel of the Consultant and its sub-consultants to be assigned to the Project. This list shall include such

information on the professional background of each of the assigned personnel as may be requested by the Owner. In the event that key personnel or sub-consultants become unavailable to Consultant at anytime, Consultant shall replace the key personnel and sub-consultants with personnel or sub-consultants having substantially equivalent or better qualifications than the key personnel or sub-consultant being replaced, as approved by Owner. Likewise, the Consultant shall remove any individual or sub-consultant from the Project if so directed by Owner in writing following discussion with the Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

5. Consultant shall make no news release, press release or statement to a member of the news media regarding this Project without prior written authorization from Owner.

## **II. CONSULTANT'S STANDARD OF CARE**

- A. By execution of this Agreement, the Consultant agrees that:
  1. The Consultant is an experienced professional firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement to design or administer a project having this scope and complexity; and will perform such Services pursuant to the standard of care set forth in subsections B. through G. of this Section II.
  2. The Consultant has the capabilities and resources necessary to perform the obligations of this Agreement.
  3. The Consultant either is, or will in a manner consistent with the standard of care set forth in this Agreement, become familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project, and that all drawings, specifications, and other documents prepared by the Consultant shall be prepared in accordance with its standard of care in an effort to accurately reflect and incorporate all such laws, rules, and regulations. All drawings, specifications, and other documents prepared by Consultant pursuant to this Agreement shall accurately reflect, incorporate and comply with all current laws, rules, regulations and ordinances which are applicable to the design and construction of the Project, and shall be complete and functional for the purposes intended (except as to any deficiencies which are due to causes beyond the control of Consultant);
- B. Consultant represents and warrants to Owner that (1) Consultant has the power and authority to enter into and perform this Agreement, (2) when executed and delivered, this Agreement shall be a valid and binding obligation of the Consultant enforceable in accordance with its terms, (3) Consultant shall, at all times during the term of this Agreement be duly licensed to perform the Services, and if there is no licensing requirement for the profession or services, be duly qualified and competent, (4) the Services under this Agreement shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions;
- C. All drawings, specifications, and other documents prepared by Consultant pursuant to this Agreement shall accurately reflect, incorporate and comply with current laws, rules, regulations and ordinances which are applicable to the design and construction of the Project, and shall be complete and functional for the purposes intended (except as to any deficiencies which are due to causes beyond the control of Consultant);
- D. All drawings, specifications, and other documents prepared by the Consultant pursuant to this Agreement shall accurately reflect existing conditions for the scope of the services to be performed;

- E. The Consultant shall be responsible for any negligent inconsistencies or omissions in the drawings, specifications, and other documents. While Consultant cannot guarantee that the various documents required under this Agreement are completely free of all minor human errors and omissions, it shall be the responsibility of Consultant throughout the period of performance under this Agreement to use due care and perform with professional competence. Consultant will, at no additional cost to Owner, correct any and all errors and omissions in the drawings, specifications, and other documents prepared by Consultant;
- F. The Owner's acceptance of documents or authorization to continue to the next phase of design shall not be deemed as approval of the adequacy of the drawings, documents, plans or specifications. Any review or acceptance by the Owner will not relieve the Consultant of any responsibility for complying with the standard of care set forth herein. The Consultant is responsible for all design Services under this Agreement, and agrees that it will be liable for all its negligent acts, errors, or omissions, if any, relative to the Services;
- G. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and/or warranties provided.

### III. COMPENSATION

**[DRAFTER'S NOTE: This template uses a standardized compensation method that will be appropriate for many transactions. The compensation method should be revised as needed to meet the unique requirements of the particular transaction.]**

The maximum, not-to-exceed, total amount payable under this Agreement is \$\_\_\_\_\_ (the "Maximum Compensation"), for the combination of Basic Services and Reimbursable Expenses. The Maximum Compensation cannot be increased without a fully executed and approved amendment or supplement to this Agreement. Consultant progress payments shall be made according to the provisions and schedule set forth in **Section V** of this Agreement. The Maximum Compensation is more particularly described as follows:

- A. **Basic Services:** The Consultant shall perform the Basic Services, directly or through the Consultants, on a time and materials basis for a Maximum Not-to-Exceed fee of \$\_\_\_\_\_.
- B. **Reimbursable Expenses:** The Owner shall reimburse the Consultant for any allowable Reimbursable Expenses, up to a maximum amount of \$\_\_\_\_\_.

Reimbursable expenses for the Project mean actual direct expenditures (without overhead, fee, markup or profit) made by the Consultant and the Consultants in the interest of the Project for the following items: long-distance communications; reproductions, postage and handling of plans, drawings, specifications and other documents (excluding reproductions for the office use of the Consultant and the Consultants); mileage and travel expenses more particularly described below; data processing and photographic production techniques; and renderings, models and mock-ups requested by the Owner. The Reimbursable Expenses will be reimbursed at cost, except travel expenses. Charges for travel expenses will be reimbursed at cost, but not in excess of the rate allowed Oregon State University employees. Travel expenses are only reimbursable when Services are rendered in excess of 25 miles from Consultant's or Consultant's office. As of the date of this Agreement, these rates are as follows. Charges for travel expenses will be reimbursed at the lowest of the following:

- (i) cost;
- (ii) the rate allowed Oregon State University employees; or
- (iii) the following rates:

Air fare (coach class only) and car rental	At cost
Personal car mileage	\$ 0.58 per mile
Lodging	\$135.00 per night plus tax

Meals: (documentation not required) (reimbursable only when associated with overnight travel)

Breakfast	\$15
Lunch	\$15
Dinner	\$30
Printing, photography, long distance telephone charges and other direct expenses	At cost

Requests for reimbursement of allowable expenses, except meals, must include documentation of actual expenditures.

**[DRAFTER'S NOTE: Check current permissible rates for Reimbursable Expenses listed above, and complete blanks above.]**

C. **Additional Services:** The Owner will compensate the Consultant for Additional Services performed by the Consultant, whether directly or through its Consultants, beyond the scope of the Basic Services described in **Section I.C**, based on hourly rates for Consultant personnel or Consultants, plus Reimbursable Expenses, in accordance with the following schedule of charges for the duration of this Agreement, but only when the Owner has given prior written authorization and the Parties have executed an amendment or supplement to this Agreement.

**CONSULTANT:**

Principals.....	\$	___	/hr
Senior Designer.....	\$	___	/hr
Designer .....	\$	__ - __	/hr
Urban Designer .....	\$	__ - __	/hr
Sr. Project Manager .....	\$	__ - __	/hr
Project Manager .....	\$	__ - __	/hr
Production Personnel/Project Consultant .....	\$	__ - __	/hr
Senior Interior Designer.....	\$	___	/hr
Interior Designer .....	\$	__ - __	/hr
Clerical.....	\$	___	/hr

**CONSULTANTS:**

\_\_\_\_\_ **[DRAFTER'S NOTE: CONSULTANT #1]**  
 .....\$ \_\_\_/hr

.....\$ \_\_/hr

.....**[DRAFTER'S NOTE: CONSULTANT #2, #3, ETC.]**

.....\$ \_\_/hr

.....\$ \_\_/hr

These charges shall also be used to determine amounts owed the Consultant in the event this Agreement is terminated as provided in **Section XVI, D.1**. Any amounts so derived may not exceed the limitations as specified by **Section III** hereof.

**IV. TIME OF PERFORMANCE**

This Agreement shall take effect on the Effective Date and Consultant shall perform its obligations according to this Agreement, unless terminated or suspended, through final completion of the Project.

**V. FEE PAYMENTS**

Monthly progress payments shall be made upon presentation, to the Owner at the following address, of one copy of the Consultant's invoice, with required documentation, for professional services rendered and/or direct expenses incurred during the preceding month:

University Financial Services  
Oregon State University  
3015 SW Western Blvd.  
Corvallis, OR 97333

Payment requests shall be submitted in the form and format stipulated by the Owner.

Upon completion of all Work under this Agreement and precedent to Owner's obligation to make final payment, Consultant shall certify, in writing, that the Consultant has completed Consultant's obligations under the Agreement by indicating "Final Billing" on final invoice to Owner.

Consultant shall deliver to Owner each MWESB Report described in this Section. Timely receipt of MWESB Reports shall be a condition precedent to Owner's obligation to pay any progress payments or final payments otherwise due.

1. Consultant shall submit annual MWESB Reports on June 30 of each year the Agreement is active ("Annual MWESB Report"). The Annual MWESB Reports shall include the total number of subcontracts awarded to MWESB enterprises as Sub-Consultants, the dollar value of each, and the expenditure toward each contract and subcontract during the previous twelve (12) months.
2. Consultant shall submit a final MWESB Report as a condition of final payment ("Final MWESB Report"). The Final MWESB Report shall include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Consultants and the dollar value of their respective contracts and subcontracts during the course of the Project

## **VI. CONSULTANT'S RESPONSIBILITIES IN REGARD TO HAZARDOUS MATERIALS**

It is envisioned that this project will not involve the removal of and destruction of asbestos, asbestos-related or other hazardous materials. It is understood and agreed that the Owner will contract separately for the identification and removal of hazardous materials, either prior to the commencement of this project or at such time as such hazardous substances are detected. It is understood and agreed that the Consultant shall not and does not prescribe any safety measure or abatement procedure and is not responsible for any act or omission relating to the acts of the Owner and/or professional consultant and/or the contractor and/or subcontractor which the Owner selects relating to the abatement of asbestos, asbestos-related or other hazardous materials.

## **VII. ACCESSIBILITY REQUIREMENTS**

The Consultant shall ensure that the project complies with the American with Disabilities Act Accessibility Guidelines (ADAAG), latest version, and allows for access to programs, activities, and services in the most integrated setting possible. The Owner will be responsible for review of accessibility and interpretation of ADAAG for compliance with Federal requirements.

## **VIII. INSURANCE PROVISIONS**

During the term of this Agreement, Consultant shall maintain in full force and at its own expense each insurance coverage or policy noted below, from insurance companies or entities with an A.M. Best rating of A- VII or better that are authorized to transact the business of insurance and issue coverage in the State of Oregon,:

- A. Workers' Compensation** - All employers, including Consultant, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. Consultant shall ensure that each of its Consultants and subcontractors complies with these requirements.
- B. Commercial General Liability** - Consultant shall secure Commercial General Liability insurance with a limit of not less than \$2,000,000 each occurrence and \$4,000,000 aggregate for bodily injury, up to and including death, property damage liability, personal/advertising injury, products and completed operations coverage and contractual liability coverage for the indemnity provided under this Agreement. The policy shall include a waiver of subrogation clause and a separation of insureds clause (cross liability). Consultant shall ensure that each of its sub-consultants and subcontractors secures and maintains Commercial General Liability insurance with a limit not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
- C. Automobile Liability** - Consultant shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per accident, for bodily injury and property damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Consultant shall ensure that each of its sub-consultants and subcontractors complies with the same minimum requirements identified above.
- D. Professional Liability/Errors & Omissions** - Consultant shall provide the Owner with proof of



coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its plans, drawings, specifications or project manual, and all related work product of the Consultant. The policy may be either a practice based policy or a policy pertaining to the specific Project. Professional Liability insurance to be provided shall have limits of not less than \$3,000,000 each claim, incident or occurrence and \$3,000,000 annual aggregate. Consultant shall ensure that each of its major sub-consultants and subcontractors (including structural, civil, mechanical, plumbing, electrical engineering, survey, geotechnical and materials testing) secures and maintains Professional Liability/Errors & Omissions with limits not less than \$2,000,000 each claim, incident or occurrence and \$2,000,000 annual aggregate. All other sub-consultants and subcontractors not listed above shall have limits not less than \$1,000,000 each claim, incident or occurrence and \$1,000,000 annual aggregate.

- E. "Tail" Coverage.** If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Agreement for a duration of thirty-six (36) months or the maximum time period available in the marketplace if less than thirty-six (36) months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for thirty-six (36) months following Owner's acceptance of and final payment for the Consultant's Services. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this agreement. This will be a condition of the final acceptance of Work or Services and related warranty, if any.
- F. Certificate of Insurance.** Prior to the signature by the Owner to this Agreement, Consultant shall furnish to the appropriate university official Certificates of Insurance and required endorsements as evidence of the insurance coverages required under this Agreement. The insurance policies will be endorsed/amended so that the insurance company or companies shall give a thirty (30) calendar day notice (without reservation) if the applicable policy is suspended, voided, canceled or materially changed, or if the aggregate limits have been reduced, except when cancellation is for non-payment, then a ten (10) days' notice may be given, to the Owner's Representative set forth in **Section XXVII** below. The certificate(s) should state specifically that the insurance is provided for this Agreement. Policies will be endorsed to show required cancellation provisions, and copies of the endorsement will be attached to the certificate of insurance. Insuring companies are subject to acceptance by the Owner.
- G. Additional Insureds.** All policies, except for Workers' Compensation and Professional Liability/Errors & Omissions, shall be endorsed so that the Owner, and its officers, trustees, agents, and employees are Additional Insureds with respect to the Consultant's Services to be provided under this Agreement.

## **IX. INDEMNITY**

- A. Indemnification.** Consultant shall indemnify, hold harmless and defend the Owner and its officers, board members, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and costs, of whatsoever nature resulting in any way from, arising out of, or relating to the activities, including professional services, of the Consultant or the Consultant's sub-consultants, partners, joint venturers, subcontractors, officers, agents or employees, and caused by any willful or negligent error, omission, or act of the Consultant, or any person employed by it, or anyone for whose acts the Consultant is legally liable while acting under or pursuant to this Agreement or any supplement or amendment hereto. The

Consultant agrees to waive all rights of subrogation against the Owner and its officers, board members, agents, and employees for losses arising from the work performed by the Consultant for the Owner.

**B. Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the Consultant, neither the Consultant nor any attorney engaged by the Consultant shall defend any claim in the name of the Owner, nor purport to act as legal representative of the Owner, without the prior written consent of the Owner's General Counsel. The Owner may, at any time at its election assume its own defense and settlement in the event that it determines that the Consultant is prohibited from defending the Owner, that Consultant is not adequately defending the Owner's interests, or that an important governmental principle is at issue or that it is in the best interests of the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Consultant if the Owner elects to assume its own defense.

## **X. LIMITATION OF LIABILITIES**

Except for any liability of the Consultant arising under or related to the Consultant's failure to perform according to the standard of care or any other liability arising under or related to the Consultant's representations and warranties under **Section II** of this Agreement, neither Party shall be liable for any indirect, incidental, consequential or special damages under this Agreement or any damages of any sort arising solely from the termination of this Agreement in accordance with its terms.

## **XI. [RESERVED]**

## **XII. OWNERSHIP AND USE OF WORK PRODUCT OF CONSULTANT**

**A. Work Product.** Copies of plans, specifications, reports, or other materials required to be delivered under this Agreement ("Work Product") shall be the exclusive property of Owner. The Owner and the Consultant intend that such Work Product be deemed "Work made for Hire", of which the Owner shall be deemed the author. If for any reason such Work Products are not deemed "Work made for Hire", the Consultant hereby irrevocably assigns to the Owner all of its right, title and interest in and to any and all of such Work Products, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The Consultant shall execute such further documents and instruments as the Owner may reasonably request in order to fully vest such rights in the Owner. The Consultant forever waives any and all rights relating to such Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use of subsequent modifications.

**B. Consultant's Use of Work Product.** The Consultant, despite other conditions of this Section, shall have the right to utilize such Work Product on its brochures or other literature that it may utilize for its sales and in addition, unless specifically otherwise exempted, the Consultant may use standard line drawings, specifications and calculations on other unrelated projects.

**C. Owner Reuse or Modification of Work Product.** If the Owner reuses or modifies the Work Product without the Consultant's involvement or prior written consent, to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, the Owner shall indemnify, within the limits of the Tort Claims Act, the Consultant against liability for damage to life or property arising from the Owner's reuse or modification of the Work Product, provided the Owner shall not be required to indemnify the Consultant for any such liability arising out of the

wrongful acts of the Consultant or the Consultant's officers, employees, sub-consultants, subcontractors, or agents.

### **XIII. SUCCESSORS AND ASSIGNS**

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Agreement is executed, Consultant shall not enter into any new Consultant agreements for any of the Services scheduled under this Agreement or assign or transfer any of its interest in or rights or obligations under this Agreement, without Owner's prior written consent. In addition to any provisions Owner may require, Consultant shall include in any permitted Consultant agreement under this Agreement a requirement that the Consultant be bound by **Sections VIII-INSURANCE, IX-INDEMNITY, X -LIMITATION OF LIABILITIES, XII- OWNERSHIP AND USE OF WORK PRODUCT OF CONSULTANT, XV-MEDIATION, XVI- TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS, XIX-FOREIGN CONTRACTOR, XX-COMPLIANCE WITH APPLICABLE LAWS, XXI-GOVERNING LAW; VENUE; CONSENT TO JURISDICTION, XXII-INDEPENDENT CONTRACTOR STATUS OF CONSULTANT, XXIII-ACCESS TO RECORDS and XXVI-NO WAIVER** of this Agreement.

### **XIV. NO THIRD PARTY BENEFICIARIES**

Owner and Consultant are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

### **XV. MEDIATION**

Consultant and Owner, in an effort to resolve any conflicts that may arise during the design or construction of the Project or following the completion of the Project, agree that all disputes between them arising out of or relating to this Agreement or any supplements hereto, shall be submitted to non-binding mediation unless the parties mutually agree otherwise. Consultant further agrees to include a similar provision in all agreements with sub-consultants retained for the Project, thereby providing for mediation as the primary method for dispute resolution between the Parties to those agreements. All Parties agree to exercise their best effort in good faith to resolve all disputes in mediation.

Each Party will pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be shared equally by all Parties to the dispute.

### **XVI. TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS**

- A. Mutual Agreement.** The Owner and the Consultant, by mutual written agreement, may terminate this Agreement at any time. The Owner, on 30 days written notice to the Consultant, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- B. Termination by Owner.** Owner may terminate this Agreement, in whole or in part, immediately upon notice to Consultant, or at such later date as Owner may establish in such notice, upon the occurrence of any of the following events:

1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Consultant's Services;
2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
3. Consultant no longer holds any license or certificate that is required to perform the Services;
4. Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Services under this Agreement within the time specified herein or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.

**C. Owner Funding.** Owner reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds and using its best efforts to have such budget approved. It is Owner's intention to make all payments due hereunder if funds are legally available therefor and in that regard Owner represents and warrants to Consultant that this agreement is important to Owner's efficient and economic operation. If, despite the above, Owner is not allotted sufficient funds for the next succeeding fiscal period by appropriation, appropriation limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, Owner may terminate this Agreement, by notice to Consultant, without penalty, effective at the end of the current fiscal period for which funds have been allocated and if not so terminated Owner will remain fully obligated for all amounts owing hereunder. Such termination shall not constitute an event of default under any other provision of the Agreement, but Owner shall be obligated to pay all charges incurred through the end of such fiscal period. Owner shall give Consultant notice of such non-availability of funds within thirty (30) days after it received notice of such non-availability.

**D. Effect of Termination.** In the event of termination of this Agreement:

1. Pursuant to **Sub-sections A, B.1 or B.2** above, the Owner, using the Schedule of hourly rates set forth in **Section III** if applicable, and within the limitations specified in **Section V** shall compensate the Consultant for all Services performed prior to the termination date, together with reimbursable expenses then due, and such amounts shall immediately become due and payable.
2. Pursuant to **Sub-sections B.3 or B.4** above, the Owner shall have any remedy available to it under this Agreement or at law or in equity. Such remedies are cumulative and may be pursued separately, collectively and in any order.
3. For any reason, the Consultant shall immediately cease performance of Services under this Agreement, unless Owner expressly directs otherwise in the notice of termination, and shall provide to the Owner all plans, specifications, CAD drawings on compact discs, drawings, and all documents, information, works-in-progress or other property that are or would be deliverables had this Agreement been completed.

4. For any reason, the Consultant shall be responsible to the Owner for the quality of its Services and work product through the date of termination.

## **XVII. [RESERVED]**

## **XVIII. DISCLOSURE OF SOCIAL SECURITY NUMBER**

Consultant must provide Consultant's Social Security number unless Consultant provides a federal tax ID number. This number is requested pursuant to ORS 305.385 and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

## **XIX. FOREIGN CONTRACTOR**

If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Consultant shall demonstrate its legal capacity to perform the Services under this Agreement in the State of Oregon prior to entering into this Agreement.

## **XX. COMPLIANCE WITH APPLICABLE LAW**

Consultant agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Agreement. Consultant specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Consultant also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Consultant to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Consultant of these obligations nor of the requirements of this Agreement. Consultant further agrees to make payments promptly when due, to all persons supplying to such Consultant labor or materials for the performance of the Services to be provided under this Agreement; pay all contributions or amounts due the Industrial Accident Fund from such contractor incurred in the performance of this Agreement; not permit any lien or claim to be filed or prosecuted against the State on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Consultant fails or refuses to make any such payments required herein, the appropriate Institution official may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve the Consultant or Consultant's surety from obligation with respect to any unpaid claims. Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Oregon Building Codes require all new construction to be totally accessible to people with physical limitations. Owner expects that all spaces in designs for new facilities and in remodel projects will be accessible to people with physical limitations.

## **XXI. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Owner and Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Benton County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, it shall be brought and conducted

solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. **CONSULTANT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

## **XXII. INDEPENDENT CONTRACTOR STATUS OF CONSULTANT**

- A. Consultant as Independent Contractor.** Consultant shall perform all required Services as an independent contractor. Although Owner reserves the right (i) to determine (and modify) the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the completed performance, Owner cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services.
- B. Agency Status.** Consultant is not an officer, employee, or agent of the State or Owner as those terms are used in ORS 30.265.
- C. Benefits; Payment of Taxes.** Consultant is not a contributing member of the Public Employee's Retirement System and will be responsible for any federal or state taxes applicable to any compensation or payments paid to Consultant under this Agreement. Consultant will not be eligible for any benefits from these Agreement payments of federal Social Security, unemployment insurance or worker's compensation, except as a self-employed individual. If this payment is to be charged against federal funds, the Consultant certifies that it is not currently employed by the federal government.

## **XXIII. ACCESS TO RECORDS**

For not less than three (3) years after the termination or full performance of this Agreement, the Owner, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Consultant and the sub-consultants which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of this Agreement, or any resulting construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. The Consultant will provide full access to such documents in preparation for and during any such litigation.

## **XXIV. SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **XXV. FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, and war which is beyond such party's reasonable control. Each party shall, however, make all reasonable efforts

to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

**XXVI. NO WAIVER**

The failure of the Owner to enforce any provision of this Agreement shall not constitute a waiver by the Owner of that or any other provision.

**XXVII. NOTICE; PARTIES' REPRESENTATIVES**

Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, or mailing the same, postage prepaid, to Consultant or Owner at the address set forth below, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

Representatives for the Consultant and the Owner for purposes of notice and for other specific purposes provided for under this Agreement are:

**Consultant:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Owner:** Anita Nina Azarenko, Associate Vice President for Capital Planning and Facilities Services

**Address:** Oregon State University  
3015 SW Western Blvd.  
Corvallis OR 97333

**With a Copy to:** OSU Project Manager  
Capital Planning & Development  
Oregon State University  
3015 SW Western Blvd.  
Corvallis, OR 97333

**And a Copy to:** Construction Contracts Administration  
Oregon State University  
644 SW 13<sup>th</sup> Ave.  
Corvallis, OR 97333

**XXVIII. CONFIDENTIALITY.**

Consultant shall maintain the confidentiality of information of Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Consultant from establishing a claim or defense in an adjudicatory proceeding. Consultant shall require the sub-consultants to execute similar agreements to maintain the confidentiality of information of Owner.

**XXIX. CONFLICT OF INTEREST.**

Except with Owner's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would or would reasonably appear to compromise Consultant's professional judgment with respect to this Project, including without limitation, concurrent employment on any project in direct competition with the Project, and will provide copies of any such agreements within ten (10) days of the full execution of such agreements.

**XXX. SURVIVAL**

All rights and obligations shall cease upon termination or full performance of this Agreement, except for the rights and obligations set forth in **Sections II** Consultant's Standard of Care, **IX** Indemnity, **X** Limitation of Liabilities, **XII** Ownership and Use of Work Product of Consultant, **XVI** Termination of Agreement; Non-Availability of Funds, **XXI** Governing Law; Venue; Consent to Jurisdiction, **XXIII** Access to Records, **XXVIII** Confidentiality, and **XXX** Survival.

**XXXI. COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

**XXXII. MERGER CLAUSE**

THIS AGREEMENT AND ANY ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER HEREOF. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIED INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT AND THE CONSULTANT AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS HEREOF, the parties have duly executed this Agreement as of the day and year first above written.

Consultant

By \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

Oregon State University, Owner

By \_\_\_\_\_

Anita Nina Azarenko, Associate Vice  
President for Capital Planning and Facilities Services

Date \_\_\_\_\_



Federal Tax ID # \_\_\_\_\_